

STATE OF MARYLAND

COMMISSIONERS

GLENN F. IVEY
CHAIRMAN

CLAUDE M. LIGON
E. MASON HENDRICKSON
SUSANNE BROGAN
GERALD L. THORPE



BRYAN G. MOORHOUSE
GENERAL COUNSEL

FELECIA L. GREER
EXECUTIVE SECRETARY

GREGORY V. CARMEAN
EXECUTIVE DIRECTOR

PUBLIC SERVICE COMMISSION

WILLIAM DONALD SCHAEFER TOWER
6 ST. PAUL STREET
BALTIMORE, MARYLAND 21202-6806
(410) 767-8000
FAX NUMBER (410) 333-6495

December 22, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, DC 20554

RE: In the Matter of Federal-State Joint Board on
Universal Service, Second Recommended Decision
cc Docket No. 96-45, DA98-2410

Dear Ms. Salas:

Enclosed for filing in the above-captioned proceeding are the original and six copies of the Initial Comments of the Maryland Public Service Commission, the Connecticut Department of Public Utility Control, the Delaware Public Service Commission, the Illinois Commerce Commission, and the Massachusetts Department of Telecommunications and Energy. A copy of these comments also was submitted electronically.

If you have any questions, please do not hesitate to contact me at (410) 767-8039. Thank you for your assistance in this matter.

Sincerely,

Susan Stevens Miller

Susan Stevens Miller
Deputy General Counsel
(410) 767-8039

SSM/dc
Enc.
SM-LTR-SALAS

11/11/98
List A 600E

0+5

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF

*

FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE

*

CC DOCKET NO. 96-45
DA 98-2410

*

SECOND RECOMMENDED DECISION

*

**INITIAL COMMENTS
OF THE**

**MARYLAND PUBLIC SERVICE COMMISSION,
THE CONNECTICUT DEPARTMENT OF PUBLIC
UTILITY CONTROL, THE DELAWARE PUBLIC SERVICE
COMMISSION, THE ILLINOIS COMMERCE COMMISSION, AND THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS
AND ENERGY**

No. of Copies rec'd
List A B C D E

0 + 5

Dated: December 23, 1998

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED
DEC 23 1998

DEC 23 1998

FILED
DEC 23 1998

IN THE MATTER OF

*

FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE

*

CC DOCKET NO. 96-45
DA 98-2410

*

SECOND RECOMMENDED DECISION

*

**INITIAL COMMENTS
OF THE**

**MARYLAND PUBLIC SERVICE COMMISSION,
THE CONNECTICUT DEPARTMENT OF PUBLIC
UTILITY CONTROL, THE DELAWARE PUBLIC SERVICE
COMMISSION, THE ILLINOIS COMMERCE COMMISSION, AND THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS
AND ENERGY**

Dated: December 23, 1998

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF

*

FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE

*

CC DOCKET NO. 96-45
DA 98-2410

*

SECOND RECOMMENDED DECISION

*

**INITIAL COMMENTS
OF THE
JOINT STATE COMMISSIONS**

I. INTRODUCTION

On November 25, 1998, the Common Carrier Bureau ("CCB") of the Federal Communications Commission ("FCC" or "Commission") released a Public Notice (DA 98-2410) seeking comment on the Federal-State Joint Board on Universal Service ("Joint Board") Second Recommended Decision.¹ In response to this Public Notice, the Maryland Public Service Commission, the Connecticut Department of Public Utility Control, the Delaware Public Service Commission, the Illinois Commerce Commission and the Massachusetts Department of Telecommunications and Energy ("Joint State Commissions") submit the following initial comments.

The Joint State Commissions support the efforts of the Joint Board to design programs which achieve the universal service goals of the 1996 Act. Sadly, the Second Recommended Decision constitutes, at best, a missed opportunity because it fails to

¹ Federal State Joint Board on Universal Service, Second Recommended Decision, CC Docket No. 96-45, FCC 98J-7 (Nov. 25, 1998). ("Second Recommended Decision")

address some of the fundamental issues regarding universal service and establish a more equitable and efficient path for the future.

The problems created by the First Universal Service Order² are not small. Mid-course correction of the technical details in the new program is not enough. In the Second Recommended Decision, the Joint Board introduces vague proposals and recommends implementing a new program without presenting any evidence regarding its effect on ratepayers. The Joint Board is pushing ahead with additional funding for the program while failing to address vital issues. Rather than focus on the details of one possible solution, the Joint Board should have addressed whether this proposed solution is even necessary.

The Joint State Commissions believe that the FCC should take this opportunity to review the entire implementation of section 254. The scope and mechanics of the new universal service system should be totally and fully reevaluated. If the FCC declines to conduct such a searching review, any proposal adopted by the FCC at this time should:³

- (1) prohibit the size of the new federal high cost fund for non-rural carriers from exceeding the cost of the existing high cost programs;
- (2) reject and/or amend the hold harmless commitment;
- (3) define clearly "reasonably comparable" and determine whether existing rates already are comparable;
- (4) place conditions on the receipt of support;

² Federal-State Joint Board on Universal Service, Report & Order, CC Docket No. 96-45, 12 FCC Rcd. 8776 (1997), appeal pending Texas Office of Public Utility Counsel v. FCC, No. 97-60421 (5th Cir.) ("First Universal Service Order.")) These problems include focusing on increasing the size of the fund rather than on creating a predictable, explicit and competitively neutral mechanism; failure to narrowly direct high cost support to truly high cost and needy areas; including single business lines in the definition of universal service; and finding that the FCC has authority to assess intrastate revenues.

³ The Joint State Commissions are commenting only on those issues it deems critical to an appropriately designed high cost program. The Joint State Commission's failure to comment on any issue should not be interpreted as assent to the Joint Board's recommendations.

- (5) delay the implementation of the proxy model until the results are available for review;
- (6) clarify that states are not required to establish their own universal service funds;
- (7) investigate further the possibility of providing high cost support in the form of a "block grant" to the states;

II. BACKGROUND

On February 8, 1996, the Telecommunications Act of 1996 ("1996 Act") was signed into law by President Clinton. Section 254 of the 1996 Act requires the FCC, and permits state commissions, to establish a mechanism to maintain universal telephone service. At least three kinds of support are specifically enumerated in the 1996 Act: support for high costs areas; support for schools, libraries and rural health care providers; and support for low-income customers.

In section 254, the 1996 Act provides a specific mandate to the FCC to institute a Joint Board to recommend procedures for the 1996 Act's various requirements regarding universal service. Pursuant to the mandates contained in the 1996 Act, the FCC issued a Notice of Proposed Rulemaking ("NPRM") on March 8, 1996. The NPRM established a Joint Board and requested comment on how to implement various provisions of section 254.

On November 8, 1996, the Federal-State Joint Board adopted a Recommended Decision regarding universal service. Among other things, the Joint Board recommended that the FCC specifically seek additional information on a number of topics. On November 18, 1996, the CCB issued a Public Notice seeking comment on the Recommended Decision.

On May 8, 1997, the FCC issued the First Universal Service Order. In this Order, the FCC adopted a four- step methodology for determining the appropriate level of federal universal service support that non-rural carriers receive. The Commission determined that non-rural carriers servicing rural, insular and high cost areas (collectively referred to as "high cost areas") would receive support based on forward-looking economic costs beginning January 1, 1999, while rural carriers serving high cost areas would move to a forward-looking methodology no sooner than January 1, 2001.

The Commission also determined that it would assess and permit recovery of contributions to the high cost support mechanisms based only on interstate revenues because such an approach would continue this historical method for recovering universal service support contributions and promote comity between the federal and state governments.⁴ Thus, the FCC concluded that carriers may recover their contributions through interstate access and interexchange revenues.⁵

On March 11, 1998, the state members of the Joint Board filed a request asking the FCC to refer back to the Joint Board certain issues related to the determination of high cost support. On July 17, 1998, by referral order, the FCC requested that the Joint Board provide recommendations on issues relating to: 1) appropriate methodology for determining and distributing support amounts; 2) whether federal support should be applied to the intrastate jurisdiction; and 3) whether it is reasonable for providers to recover universal service contributions through rates, surcharges or other means.

On November 23, 1998, the Joint Board issued its Second Recommended Decision, making recommendations on, among other things, a definition of reasonably comparable and a methodology for determining and distributing support amounts.

⁴ First Universal Service Order, 12 FCC Rcd. at 9198-9203, paras. 824-836.

⁵ Id., 12 FCC Rcd. at 9199-9200, paras. 829-830.

III. ARGUMENT

A) THE FUND SIZE FOR NON-RURAL LOCAL EXCHANGE CARRIERS SHOULD NOT EXCEED THE PRESENT LEVEL.

There is general recognition that universal service largely has been achieved. As the Joint Board noted “[r]ates today are generally affordable and subscribership is currently very high in most areas of the nation.”⁶ Furthermore, “[p]resent rates are sufficient to cover costs of serving most customers across the nation.”⁷ Thus, as a threshold matter, telephone rates in the United States are generally affordable and meet the comparability principles enunciated in the 1996 Act. The Joint Board should have begun its deliberations with the presumption that no increase in any non-rural carrier’s high cost support currently is necessary to achieve the 1996 Act’s universal service goals.

The Joint State Commissions urge the FCC to create a federal support mechanism that does not increase the current total support for non-rural carriers.⁸ Past support programs may not have been perfect, but they have worked quite well. Statistics released by the FCC reveal that the nationwide penetration level of households is 93.9 percent. This penetration rate has remained relatively stable in the last several years. Given that a high penetration level has been largely achieved nationwide with the current level of federal universal service funding, any increase in the size of the high cost fund is

⁶ *Second Recommended Decision*, at para. 39.

⁷ *Id.*, at para. 15.

⁸ Current federal universal support for non-rural carriers for the fourth quarter of 1998 is projected to be \$253 million on an annualized basis, of which \$140 million is received by Puerto Rico.

unjustified. Since one can reasonably conclude that universal service already is largely achieved, ratepayers should not be required to contribute additional funds.⁹

Congress' enactment of section 254 was based on the fundamental premise that local competition would necessitate a system of explicit support to maintain affordable rates. The 1996 Act mandates construction of an explicit universal service funding mechanism to ensure "sufficient" funding if and when competition erodes implicit subsidies.¹⁰ As noted by Commissioner Ness, "[T]he Joint Board members generally agree that local competition is not yet developing quickly, and they detect no clear evidence that sources of implicit support have been undermined."¹¹

Because there is currently limited local competition, additional high cost funding is not necessary. Additional universal service support should not flow until competition actually develops and then only if necessary.¹² If additional federal support is needed after competition begins at the local level, the issue can be addressed at that time with the benefit of actual data.¹³ It has not been demonstrated that the non-rural carriers require additional federal universal support under present conditions. Their telecommunications

⁹ As the Senate Commerce Committee found, the 1996 Act does not require the FCC to adopt a program that requires the level of high cost universal service support to become more expensive and burdensome to unsubsidized ratepayers than it is today. Sen. Rep. No. 1. 104-23, 104th Cong., 1st Sess., 25-26 (1995).

¹⁰ The Joint Board concurs in this interpretation of the 1996 Act. "In the 1996 Act, legislators recognized that existing support mechanisms could be threatened as effective competition materializes. Congress also made clear in the 1996 Act that federal and state regulators must ensure that universal service is preserved and advanced as we move from a monopoly to a competitive market." *Second Recommended Decision*, at para. 1. See, also, paras. 3 and 15.

¹¹ *Second Recommended Decision*, Separate Statement of Commissioner Susan Ness, at page 2.

¹² As the Joint Board noted, "[I]ncumbent LECs here to date have not demonstrated that implicit support has eroded as a result of competition." *Second Recommended Decision*, at para. 50. See, Separate Statement of Commissioner Laska Schoenfelder, dissenting, pg. 1.

¹³ Some commentators have argued that it was competition that caused higher penetration rates. According to Milton Mueller, high levels of telephone penetration are not attributable to an industry – government commitment but to years of access competition (before 1920) which spurred the Bell system to sign up as many customers for service as it could. See, Milton L. Mueller, Jr., *Universal Service: Competition, Interconnection and Monopoly in the Making of the American Telephone System* (1997). Thus, competition may have the unexpected effect of increasing telephone penetration in rural areas.

services revenues, measured at the study area level, are more than sufficient to cover costs, even without taking the access contribution into account.

While it may be found that redistribution of currently available high cost support is desirable to improve rate comparability, it has never been demonstrated that the total amount of fund support needs to be increased. Funding at the current level will more than meet the section 254 requirement that support be "sufficient." Most importantly, the current level of funding would provide sufficient support without creating additional burdens on ratepayers.

B) THE "HOLD HARMLESS" COMMITMENT VIOLATES THE 1996 ACT.

In its *Report to Congress*, the FCC stated:

The Commission will work to ensure that states do not receive less funding as we implement the high cost mechanisms under the 1996 Act. We find that no state should receive less funding as we implement the high cost support mechanisms under the 1996 Act.¹⁴

The Joint Board noted its support for this commitment in the *Second Recommended Decision*.¹⁵ This commitment, however, violates the 1996 Act.

Section 254 speaks of the preservation of universal service, not the preservation of universal service **funding**. 47 U.S.C. §254(b), (d) & (f). Furthermore, the Joint Board has ignored its Congressional mandate to fully re-examine the high cost program.¹⁶ The FCC stated that it "found" that no state should receive less funding. But there is no evidence on

¹⁴ *Report to Congress*, FCC 98-67, at para. 219.

¹⁵ *Second Recommended Decision*, at paras. 4, 5n, 6, 41 and 53.

¹⁶ "The conferees intend that, in making its recommendations to the Commission, the Joint Board will thoroughly review the existing system of Federal Universal Service support." Joint Explanatory Statement of the Committee of Conference, at page 16. The language of the 1996 Act is less revealing: "the Commission shall institute and refer to a Federal – State Joint Board ... recommended changes ... in order to implement section 214(a) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations ." 47 USC §254(a). Federal courts have held that when interpreting a statute that does not clearly state the legislature's intent in enacting the law, the courts look to the legislative history for an explanation. *Stuy v US Postal Service*, 951 F.2d 1079 (9th Cir. 1991)

the record to support this finding. The FCC and the Joint Board have arbitrarily determined the base level of support without any evidence that this level of support is necessary to achieve the objectives of the 1996 Act. By supporting a "hold harmless" commitment to high cost states, the Joint Board implicitly acknowledges that it has not complied with its Congressional mandate, as provided for in the Conference Report to "thoroughly review the existing system." If the Joint Board had conducted this analysis, its conclusion would not have been the mere recitation of the status quo, or "hold harmless" principle, for high cost states.

Support should not last into perpetuity independent of changed circumstances in technology, markets, and competition. Rather than continue in perpetuity, universal service support to non-rural carriers should be thoroughly examined and the determination should be made for how this support can be reduced or phased-out.

Furthermore, this commitment guarantees incumbent local exchange carriers certain amounts of support regardless of the cost of providing service. While the 1996 Act seeks to ensure service at reasonably comparable prices in high cost areas, it cannot be read as any kind of an income guarantee for carriers in high cost areas. Giving incumbent local exchange carriers preference in the receipt of universal service support is discriminatory, anticompetitive and unjustified.

While the 1996 Act requires support to be "portable", as a practical matter, the absence of competition in these areas means only the current incumbent carrier will receive support into the foreseeable future. Furthermore, if there is competition for customers in a rural area, this competition itself will drive down costs and a "high cost" subsidy will no

longer be necessary. However, under the Joint Board's recommendation funding would still be provided to that area.¹⁷

**C) THE FCC SHOULD CLEARLY DEFINE THE
"REASONABLY COMPARABLE" STANDARD
ESTABLISHED BY THE 1996 ACT.**

The Joint Board's definition of "reasonably comparable" rates only references a range of hypothetical urban/rural rates, both within a state's borders and among states nationwide,¹⁸ but fails to specifically identify the rate level which should be maintained as the comparability standard. The Joint Board further suggests that the FCC use average forward looking costs as a proxy for rate comparability.¹⁹

These two positions are inconsistent and will most likely produce different outcomes. First, existing rates have been set by different state commissions using different rate design methodology. Second, proxy models are based on forward-looking cost methodology which may not accurately approximate existing rates, because existing rates have been based on embedded costs.

Furthermore, the Joint Board's interpretation that reasonably comparable means that rates in a rural area should be comparable to rates in some "national" urban area rather than comparable to urban rates within the same state could potentially cause anomalous results. For example, rates in urban Denver may be higher than rates in Miami for a variety of reasons. Under the Joint Board's standard, residents in rural Colorado would be entitled to rates that are reasonably comparable to Miami. Thus, Colorado's rural consumers could end up paying less than residents of downtown

¹⁷ Also, the hold harmless commitment increases the likelihood that some areas will be overcompensated, thus creating competition for subsidies. See, Separate Statement of Chairman Julia Johnson and Commissioner David Baker.

¹⁸ Second Recommended Decision, at paras. 15 and 18.

¹⁹ Id., at para. 42.

Denver. A basic rule of statutory construction is that statutes must be interpreted to avoid absurd results. This could not have been what was intended by the 1996 Act.

The Joint Board further explains its view of reasonably comparable by recommending that “federal support be available to non-rural carriers serving consumers in areas with costs significantly above the national average and whose average costs throughout its study area significantly exceed the national average.”²⁰ Essentially, the Joint Board has replaced one vague standard with another one. The term significantly is susceptible to as many interpretations as the term reasonably comparable.

The Joint Board attempts to remedy this situation by recommending a range between 115 and 150 percent of the national weighted average cost per line be used to determine when rates are “significantly above the national average.”²¹ The Joint State Commissions concur with Commissioners Tristani and Furchgott-Roth that it is unclear, given the record, how the Joint Board reached this determination. Such a determination may be shown to be correct, but only after a full disclosure of the model and its inputs is made. The Joint State Commissions are hesitant to support this conclusion given the incomplete record regarding the model. Therefore, the Joint State Commissions recommend that the FCC reconsider adopting this conclusion until such time as the model and its inputs are made available for all states to review.

Based on this “standard,” the Joint Board concludes:

Some states may face significant obstacles in maintaining reasonably comparable rates and may find that solving this problem by state action alone is impossible or unreasonable in some instances. For this reason, we believe that additional federal support may be needed to ensure that rates are reasonably comparable, as required by section 254(b)(3).²²

²⁰ Id., at para. 19 (emphasis added).

²¹ Id., at para. 43.

²² Id., at para. 40.

However, the Joint Board could not specify the amount of support required by the comparability standard.

The FCC should further investigate the issue of reasonably comparable rates. First, the FCC needs to determine whether existing rates are already reasonably comparable before agreeing to increase the size of the existing fund. If this determination is not made, the FCC may be changing a system that works for one that is at best untried and untested. Second, the FCC should determine whether forward looking costs can reasonably approximate existing rates.

D) THE FCC SHOULD CONSIDER PLACING CONDITIONS ON THE RECEIPT OF FEDERAL SUPPORT.

It is not at all unusual for federal programs to place conditions on receipt of federal funding. Conditions ensure that funding goes to those who need it most and that the funding is spent as intended. Even the FCC has recognized the legitimacy of placing conditions on the receipt of universal service funding. In the *First Universal Service Order*, the FCC required “states to establish intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal service support for schools and libraries in that state.”²³

As the Joint State Commissions demonstrated previously, there is no need for a universal service fund that exceeds the amount of high cost support provided to non-rural carriers through the current mechanisms. However, as a condition of receiving funding, the FCC should better target support by considering household income in addition to

²³ *First Universal Service Order*, at para. 550 (emphasis added). The Joint Board itself recommended that the FCC require carriers to certify that they will apply federal high cost universal service support in a manner consistent with section 254. *Second Recommended Decision*, at para. 57.

access costs in determining eligibility for high cost support.²⁴ The FCC's high cost subsidy program should take into account the greater ability of high income households to pay for basic local exchange service.²⁵ Ignoring a household's ability to pay the true cost of service imposes real and substantial costs on society.

In the *First Universal Service Order*, the FCC agreed with the Joint Board and found that consumer income level should be a factor in developing a universal service mechanism.²⁶ More specifically, the FCC defined affordability to contain an absolute component that takes into account an individual's ability to pay for telephone service as well as a relative component that accounts for whether consumers are spending a disproportionate amount of their income on telephone services.²⁷

Household income level also affects whether rates are reasonably comparable. For example, if a household with an income of \$100,000 pays approximately \$167.00 a month for telephone service, this cost is reasonably comparable to a household with an income of \$20,000 paying \$34.00 per month for telephone service since both are spending approximately two percent of their income for the services.²⁸

While in some cases the social benefits of subsidies justify the inefficiencies they cause, this is clearly not the case with regard to high cost funding for the wealthy. Wealth transfers to consumers with relatively high incomes advance absolutely no identifiable social goals.

²⁴ The Joint Board notes the need for targeting federal support to the areas of greatest need. *Second Recommended Decision*, at para. 41. While Joint Board refers to targeting additional federal support, there is no rational basis for not targeting existing support to those who need it most.

²⁵ Limiting funding by income is not a new concept for the FCC. The FCC decided to base the level of subsidies for schools and libraries in large part on the relative wealth of the individual school or library. *Id.*, at paras. 498-500.

²⁶ *First Universal Service Order*, at para. 110.

²⁷ *Id.*

²⁸ Arguably, the \$34.00 a month is more of a hardship on the consumer with the lower income since that household would have less disposable income.

Rather than simply state that it agrees that income levels are a factor to be considered, the FCC should specifically restrict high cost funding to only those households with incomes below the seventieth income percentile.²⁹ This restriction will focus support on households actually requiring assistance to obtain basic telecommunications services and will reduce requirements for users to subsidize services provided to those who can afford to pay on their own.

Finally, the Joint Board recognized that some states may lack the authority or desire to impose constraints or conditions on the use of federal high cost support. Based on this information, the Joint Board determined that the FCC should not require any state action as a condition for carriers to receive high cost support.³⁰

The Joint State Commissions disagree with the Joint Board's conclusion. Those states which lack the regulatory authority to ensure that federal funds are used appropriately should not receive any federal funding. Essentially, the residents of that state, through their legislature, have determined that the telephone industry in that state should be treated like any other competitive industry. Treating the carrier as if it is in a competitive industry means not receiving subsidies that are the product of regulation elsewhere. Finally, any state that simply lacks the desire to ensure the appropriate use of federal subsidies certainly does not deserve to receive any funding.³¹

²⁹ A study by Economics and Technology, Inc. demonstrates that at least 20 percent of the high cost fund could be eliminated if support were limited to households with incomes below the seventieth percentile. Defining the Universal Service "Affordability" Requirement; A Proposal for Considering Community Income As a Factor in Universal Service Support, at page 3.

³⁰ *Second Recommended Decision*, at para. 58.

³¹ As Comm. Schoenfelder stated, "[T]he state regulators are in the best position to ensure that the support is applied to the rates, services and facilities that it was intended to support... State regulators must have the authority to ensure that universal support is used to maintain and upgrade facilities to provide quality service in rural areas." Separate statement of Commissioner Laska Schoenfelder, dissenting, at page 3.

E) THE FCC SHOULD DELAY THE IMPLEMENTATION OF THE PROXY MODEL UNTIL THE RESULTS ARE SUBJECTED TO MEANINGFUL REVIEW.

In addition to determining an affordable rate, calculating the cost of providing universal service is key. Thus, the choice of a cost model platform and associated cost inputs is a crucial step in determining the amount of support required. In the *Second Recommended Decision*, the Joint Board states that it is recommending “a federal high cost support mechanism for non-rural carriers that enables rates to remain affordable and reasonably comparable, even as competition develops, but that is no larger than necessary to satisfy the statutory mandate.”³² The Joint Board further states its belief that “sizing the fund correctly is essential to ensuring that all consumers across the country benefit from universal service,”³³ and that they “fully anticipate that the model results will furnish reasonable cost estimates for all regions of the country that can provide the basis for determining federal high cost support.”³⁴

However, the Joint Board’s conclusions are not based on any evidence in the record. The Joint Board has recommended a framework without any indication of how this proposed framework will actually affect the universal service program. There are no actual numbers, because the results of the proxy cost model, upon which the Joint Board relies, are not complete. Therefore, it is impossible for anyone, including members of the Joint Board, to identify all of the impacts of any decision based upon these recommendations. The Joint State Commissions do not believe that it is good public policy to adopt such recommendations, which may cause unintended consequences that are not in the public interest.

³² *Second Recommended Decision*, at para. 3 (emphasis added).

³³ *Id.*

³⁴ *Id.*, at para. 29.

The Joint Board's acceptance of the cost proxy model absent any supporting data is extremely alarming. The importance of the proxy model to an appropriate federal program cannot be overstated. The Joint Board's relinquishing any authority it may have had to review this model is particularly disturbing given the fact that the Joint Board already has concluded that additional federal funding is needed.³⁵

The Joint Board attempts to resolve this dilemma by recommending that the existing system be maintained unless the model produces consistent and rational results.³⁶ While this recommendation is commendable, the Joint Board makes no provision for review of the proxy model results by interested parties. Essentially, if the **FCC** is satisfied with the model's results, it may begin using this model to determine and distribute funding on July 1, 1999.

The Joint State Commissions recommend referring the issue back to the Joint Board after the inputs have been selected and cost estimates can be provided. This referral will give the states an important degree of input into the decisions that greatly affect them. The FCC should delay all decisions that could alter the size of the fund until after the results of its proxy model are available and reviewed by interested parties.

F) THE FCC SHOULD CLARIFY THAT STATES ARE NOT REQUIRED TO ESTABLISH THEIR OWN UNIVERSAL SERVICE FUNDS.

Section 254(f) of the 1996 Act does not grant the FCC authority to mandate that a state establish an intrastate universal service fund. However, the Joint State Commissions are concerned about the Joint Board's apparent inconsistency regarding the implementation of, in particular, intrastate high cost funds. Specifically, the Joint Board

³⁵ See, e.g., *Second Recommended Decision*, at para. 40 and 41. How the Joint Board could reach this conclusion without the benefit of any numbers is simply incomprehensible and demonstrates the arbitrary nature of that conclusion.

³⁶ *Id.*, at para. 29.

stated that the federal fund “need not take into account the state’s authority and ability to establish state universal service support mechanisms...”³⁷ In contrast, the Joint Board later states that federal support should only be used to supplement a state’s ability to address its own universal service needs³⁸

These statements could be interpreted as requiring that a state fund be established either to supplement the federal fund or determine the appropriate level of federal support. The Joint State Commissions are concerned with this conclusion because some states may not have the authority to establish such a fund, absent action by their legislature. Furthermore, any such requirement would violate section 254(f) of the 1996 Act, which provides that a state may create its own universal service program. The Joint State Commissions recommend that the FCC clarify the purpose of the state funds and whether development of these funds will be required to determine the level of support a state will receive.

**G) THE FCC SHOULD INVESTIGATE FURTHER THE
POSSIBILITY OF PROVIDING HIGH COST SUPPORT
TO THE STATES IN THE FORM OF BLOCK GRANTS.**

In paragraph 61, the Joint Board recommends that the FCC not adopt the “block grant” proposal which would give distribution responsibilities to the State commissions. Again, the Joint State Commissions concur with those Joint Board members who dissented from the majority’s position on this issue, since the conclusion is not fully supported in the record. Therefore, the Joint State Commissions recommend that the FCC reconsider alternative distribution proposals and at the very least provide more support for its conclusion.

³⁷ *Second Recommended Decision*, at para. 37.

³⁸ *Id.*, at para. 44.

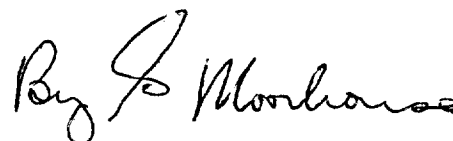
IV. CONCLUSION

The Joint State Commissions fully recognize and support the public policy goals of universal service. The Joint State Commissions believe that continued federal-state cooperation is essential to ensure that all markets and subscribers receive the benefits of competition.

The Joint State Commissions look forward to continuing to work with the FCC to ensure that our mutual goal of universal service is maintained. For the foregoing reasons, the Joint State Commissions respectfully request that the FCC incorporate into the final rule issued in this proceeding the positions and suggestions discussed in these comments.

Continued for signatures

MARYLAND PUBLIC SERVICE COMMISSION



Bryan G. Moorhouse
General Counsel



Susan Stevens Miller
Deputy General Counsel
Maryland Public Service Commission
6 Saint Paul Street
Baltimore, Maryland
21202
(410) 767-8039

Dated: December 23, 1998

Donald W. Downes
Chairman

Glenn Arthur
Vice-Chairman

Jack R. Goldberg
Commissioner

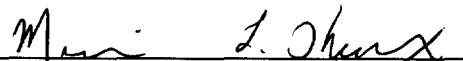
John W. Betkoski, III
Commissioner

Linda Kelly Arnold
Commissioner

December 23, 1998

Connecticut Department of
Public Utility Control
Ten Franklin Square
New Britain, CT 06051

CERTIFICATION

A handwritten signature in dark ink, appearing to read "Miriam L. Theroux", is written over a horizontal line.

Miriam L. Theroux
Commissioner of the Superior Court

DELAWARE PUBLIC SERVICE COMMISSION

Dr. Robert J. McMahon
Chairman

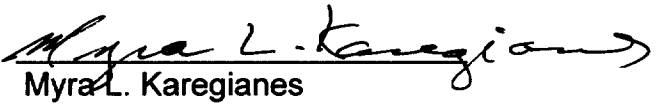
Delaware Public Service Commission
861 Silver Lake Boulevard,
Cannon Building, Suite 100
Dover, Delaware 19904

A handwritten signature in black ink, appearing to read "Dr. Robert J. McMahon", written over a horizontal line.

Dated: December 23, 1998

Respectfully submitted,

The Illinois Commerce Commission

By: 


Myra L. Karegianes
General Counsel
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago, Illinois 60601
(312)-793-2877

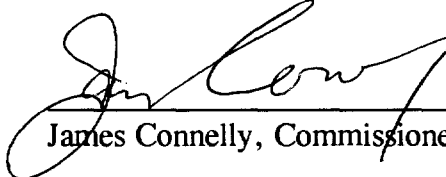
Counsel for
the Illinois Commerce Commission

December 23, 1998


THE COMMONWEALTH OF MASSACHUSETTS
THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY


By:


Janet Gail Besser, Chair


James Connelly, Commissioner


W. Robert Keating, Commissioner

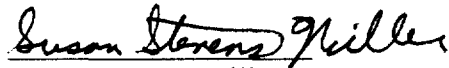

Paul B. Vasington, Commissioner


Eugene J. Sullivan, Jr., Commissioner

100 Cambridge Street, 12th Floor
Boston, MA 02202
(617)305-3500
December 23, 1998

CERTIFICATE OF SERVICE

I, Susan Stevens Miller, hereby certify that on December 23, 1998, an original and six (6) copies of the Initial Comments of the Joint State Commissions were hand-delivered to Magalic Roman Salas, Secretary to the Federal Communications Commission. In addition, copies were sent on December 23, 1998, via First Class Mail, postage prepaid to all parties on the attached service list.



Susan Stevens Miller
Deputy General Counsel
Maryland Public Service Commission

Peter Bluhm
Vermont Department of Public Service
112 State Street
Montpelier, VT 05602-2701

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

Mary Newmeyer
Alabama Public Service Commission
100 N. Union Street, Suite 800
Montgomery, AL 36104

Brian Roberts
Public Utilities Commission of the State of California
505 Van Ness Avenue
San Francisco, CA 94102

Tom Wilson
Washington U&TC
1300 S. Evergreen Park Dr., S.W.
Olympia, WA 98504-7250

Ms. Sheryl Todd
Universal Service Branch
Accounts and Audits Division
Federal Communications Commission
2100 M. Street, N.W., 8TH Floor
Washington, DC 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M. Street, N.W., Room 832
Washington, D.C. 20554

The Honorable William E. Kennard, Chairman
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

The Honorable Michael K. Powell, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

The Honorable Gloria Tristani, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

The Honorable Harold Furchgott-Roth, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Kevin Martin
Senior Legal Advisor
Office of Commissioner Furchgott-Roth
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Kathryn Brown
Office of the Chairman
Federal Communications Commission
1919 M. Street, N.W., Room 814
Washington, D.C. 20554

James Casserly
Office of Commissioner Ness
Federal Communications Commission
1919 M. Street, N.W., Room 832
Washington, D.C. 20554

Emily Hoffnar, Federal Staff Chair
Accounting and Audits Division
Universal Service Branch
Federal Communications Commission
1919 M. Street, N.W., Room 8617
Washington, D.C. 20554

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
Forum Place
555 Walnut street, 5th Floor
Harrisburg, PA

Martha S. Hogerty
Public Counsel for the State of Missouri
301 West High Street, Suite 250
P.O. Box 7800
Jefferson City, MO 65102

Pat Wood, Chairman
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78701

Sandra Adams
Iowa Utilities Board
Lucas State Office Building
350 Maple Street
Des Moines, IA 50319

Thor Nelson
Colorado Office of Consumer Counsel
2580 Logan Street, Suite 610
Denver, CO 80203

Paul Gallant,
Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
1919 M. Street, N.W., Room 826
Washington, D.C. 20554

The Honorable Julia Johnson
State Chair
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

The Honorable Laska Schoenfelder, Commissioner
South Dakota Public Utilities Commission
State Capitol
500 E. Capitol Street
Pierre, SD 57501-5070

Rowland Curry
Texas Public Utility Commission
1701 North Congress Avenue
P.O. Box 13326
Austin, TX 78701

Walter Bolter
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Lori Kenyon
Alaska Public Utilities Commission
2016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

Doris McCarter
Ohio Public Utilities Commission
180 E. Broad Street, 3rd Floor
Columbus, OH 43215

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth street, S.W., Room TW-A325
Washington, DC 20554

Charles Bolles
Nevada Public Utilities Commission
1150 E. William Street
Carson City, NV 89701-3109

Mark Long
Economic Analyst
Florida Public Service Commission
Gerald Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Brad Ramsay
NARUC
P.O. Box 684
Washington, DC 20044-0684